



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

March 23, 2009

REGISTERED MAIL
RB 670 356 855 US

GRE Golden Tides, LLC
2801 Alaskan Way, Suite 200
Seattle, WA 98121

RE: Water Quality Certification Order #6225 for U.S. Army Corps of Engineers (Corps) Reference #NWS-2008-0498-NO to conduct maintenance dredging and replace an existing breakwater at a recreational marina, Seattle, Puget Sound, King County, Washington.

Dear Applicant:

On June 10, 2008, you submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act (CWA) for the proposed project. This project proposes to:

- Dredging of 700 cubic yards of material over an area of approximately 13,300 square feet within the marina proper to achieve a design depth of -10 feet MLLW.
- Removal and disposal of the existing timber pile and timber lagging breakwater, including pulling/cutting 17 creosoted-timber piles.
- Removal of 150 square feet of existing dock at the entrance to the marina. One treated timber pile supporting this section will be removed and replaced with a 16-inch steel pile.
- Installation of a new 140-foot long by 3-ft wide floating timber-decked breakwater anchored by eight 16-inch steel piling.

The U.S. Army Corps of Engineers issued a joint public notice for an individual Section 404 and Section 10 Permit on May 19, 2008, for the proposed project.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the JARPA and the May 19, 2008, public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.



GRE Golden Tides LLC
March 23, 2009
Page 2 of 2

If you have any questions, please contact Lori Lull at 425-649-7271,
LENL461@ecy.wa.gov. The enclosed Order may be appealed by following the
procedures described in the Order.

Sincerely,



Erik Stockdale
401/Wetlands Unit Supervisor
Northwest Regional Office
Shorelands and Environmental Assistance Program

ES:lcl:cja
Enclosure

cc: Jacalen Printz, U.S. Army Corps of Engineers
Nicole Faghin, Reid Middleton
Laura Arber, Washington Department of Fish and Wildlife

e-cc: Tim Schlender – HQ
ecyrefedpermits@ecy.wa.

IN THE MATTER OF GRANTING A)	ORDER # 6225
WATER QUALITY)	Corps Reference No. NWS-2008-0498-NO
CERTIFICATION TO)	Removal and replacement of an existing
GRE Golden Tides, LLC)	breakwater, removal of a portion of an existing
in accordance with 33 U.S.C. 1341)	dock and maintenance dredging at Golden Tides
(FWPCA § 401), RCW 90.48.120, RCW)	Marina located in Shilshole Bay, King County,
90.48.260 and Chapter 173-201A WAC)	Washington.

TO: GRE Golden Tides, LLC
 2801 Alaskan Way,
 Suite 200
 Seattle, WA 98121

The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on May 19, 2008. On June 10, 2008, Ecology received a Joint Aquatic Resources Permit Application (JARPA) from Watermark Estate Management Services requesting a 401 Water Quality Certification (WQC).

The proposed project entails:

- Dredging of 700 cubic yards of material over an area of approximately 13,300 square feet within the marina proper to achieve a design depth of -10 feet MLLW.
- Removal and disposal of the existing timber pile and timber lagging breakwater, including pulling/cutting 17 creosoted-timber piles.
- Removal of 150 square feet of existing dock at the entrance to the marina. One treated timber pile supporting this section will be removed and replaced with a 16-inch steel pile.
- Installation of a new 140-foot long by 3-ft wide floating timber-decked breakwater anchored by eight 16-inch steel piling.

The project is located in Puget Sound, Seattle, King County, Washington, Section 10, Township 25 North, Range 3 East, WRIA #8.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 303, 306 and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve Watermark Estate Management Services from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean GRE Golden Tides, LLC, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: Federal Project Coordinator, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals and notifications shall be identified with Order No. 6529 and include the Applicant's name, project name, project location, the project contact and the contact's phone number.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 10, 2008, updated drawings received June 18, 2008, and the Final Eelgrass Monitoring Plan dated March 2009. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA and updated drawings is voided by subsequent changes to the project not authorized by this Order.

4. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
5. This Order shall be rescinded if the Corps does not issue a Section 404 and Section 10 permit.
6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
9. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.
10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
11. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

B. Water Quality

1. Per the state water quality standards Chapter 173-201A-210 WAC Shilshole Bay is designated as "extraordinary" and the criteria of that designation apply to this project, except as specifically authorized by this Order.

2. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(e)(i).
3. Turbidity shall be assessed and recorded at a minimum of every four (4) hours during daylight hours when in-water activities are being conducted. Monitoring points shall be at the point of compliance as specified in WAC 173-201A-210(1)(e)(i)(D), which allows a 150 feet temporary area of mixing downstream from the in-water activities. The Applicant must monitor the water for any visual signs of turbidity at the point of compliance.
 - a. For this project, the following is considered to be an exceedance of the water quality turbidity standard:
 - i. If project-related turbidity is visible at a radius of 150 feet from the in-water activity.
4. If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, correct the problem and/or prevent further water quality turbidity exceedances. If an exceedance occurs, the Applicant shall follow the protocols and notification procedures below:
 - a. Notification of exceedances that are detected through water quality monitoring shall be made to Ecology within 24 hours of occurrence. Notification shall be made per Condition A2 above. The Applicant shall, at a minimum, provide Ecology with the following information:
 - i. A description of the nature and cause of the exceedances,
 - ii. When the exceedances occurred, including exact dates, duration, times and the distance that turbidity was observed; and
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
 - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the problem, corrective action taken and/or planned, steps to be taken to prevent a recurrence, photographs, and any other pertinent information.
5. Mitigation and/or additional monitoring may be required if water quality standards are not met.

C. Conditions for In-water and Over-water Construction Activities

General Conditions:

1. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
1. Barges or other work vessels shall be restricted to elevations adequate to prevent grounding of the barge or vessel.
2. A silt curtain shall be deployed and maintained in a functional manner to contain suspended sediments at the work site.
3. Any construction debris or dredge spoils shall be temporarily stored upland of the ordinary high water mark or securely on the barge so that it cannot enter a waterway or cause water quality degradation to state waters.
4. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
5. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
6. During construction, the Applicant shall have a boat available on site at all times to retrieve debris from the water.

Piling Removal Conditions:

7. Approximately 18 piling shall be removed, either completely extracted or cut off at the mudline. The piling that will be completely extracted shall be removed by vibratory extraction. In the event these pilings break off during extraction, the remaining piling may be removed by using a chain or clamshell bucket or cut off.
8. Piles removed from substrate shall be moved immediately from the water into the barge or onto uplands. The pile shall not be shaken, hosed-off, left hanging to drip or any other action intended to clean or remove adhering material from the pile.

9. Work surface on the barge deck or on uplands shall include a containment basin for piles and any sediment removed during pulling of the piling. Basins may be constructed of durable plastic sheeting with sidewalls supported by hay bales or support structure to contain all sediment.

Pile Driving:

10. The new pilings shall include approximately 9 steel piling.
11. The pilings shall be installed using a vibratory hammer or impact hammer.
12. If use of an impact hammer is required, a bubble curtain will be utilized to minimize impacts to fish.

Dredging Conditions:

13. Dredging shall be performed with a clamshell dredge deployed from a floating barge.
14. Dredge spoils shall not be dewatered on site.
15. Dredge spoils shall be disposed at the Elliott Bay Puget Sound Dredged Disposal Analysis open-water disposal site.

F. Timing Requirements:

1. This Order expires five (5) years from the date of issuance. A new 401 Certification must be obtained prior to expiration in order to continue beyond five years.
2. In-water work shall be subject to timing limitations imposed by WDFW. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

G. Notification Requirements:

1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #NWS-2008-0498-NO, Order #6225, can take place by telephone to (425) 649-7271 or (425) 649-7000, fax to (425) 649-7271, or in writing.

H. Emergency/Contingency Measures:

1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
 - a. Cease operations at the location of the violation or spill.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
 - d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

I. Appeal Process:

You have the right to appeal this decision to the Pollution Control Hearings Board. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the “date of receipt” of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:


Federal Permit Coordinator
Department of Ecology
3190 160th Ave SE
Bellevue, WA 98008

For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated April 1, 2009 at Bellevue Washington.



Erik Stockdale, 401/Wetlands Unit Supervisor
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**GRE Golden Tides, LLC
Maintenance Dredging and Breakwater Repair
Water Quality Certification Order #6225**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #6225 Section 401 Water Quality Certification for the GRE Golden Tides, LLC Maintenance Dredging and Breakwater Repair Project. I have also read and understand all permits, plans, documents, and approvals associated with the GRE Golden Tides, LLC Maintenance Dredging and Breakwater Repair Project referenced in this Order.

Signature

Date

Title

Company